



HIGH COURT OF KIRIBATI

Criminal Case N° 11/2019

THE REPUBLIC

v

TIKAUA RUAIA

*Teanneki Nemta for the Republic
Teetua Tewera for the prisoner*

Date of sentencing: 17 June 2019

SENTENCE

- [1] Tikaua Ruaia has pleaded guilty to 1 count of indecent assault, contrary to section 133(1) of the *Penal Code*.¹
- [2] The circumstances giving rise to this charge occurred at the KUC *maneaba* in Bonriki on South Tarawa at around 3:00 or 4:00am on 29 September 2014. There had been a large gathering at the *maneaba* earlier in the evening and the complainant and her husband were sleeping. The prisoner entered the *maneaba* and lay at the feet of the complainant. He then put his hand up through the left leg of the complainant's shorts and touched her in the genital area. The complainant woke up, at which point the prisoner withdrew his hand and pretended to be sleeping. The complainant alerted her husband, who punched the prisoner and tied him up to await the arrival of the police.
- [3] When the prisoner was questioned by police a little over a week later, he admitted the offence and offered his apology to the complainant.
- [4] An information was originally filed on 29 January 2016, charging the prisoner with 2 counts of indecent assault. It would seem that the prisoner was never served with notice of that information. There is a note on the court file that suggests that a decision was made to proceed instead in the Magistrates'

¹ Despite the repeal and replacement of section 133 by section 4 of the *Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act 2017*, which commenced on 23 February 2018, this case has proceeded under the *Penal Code* as it was in force on the date of the offence (as provided for under section 10(2) of the amending Act).

Court. It would appear that this did not happen. On 2 April 2019, a fresh information was filed in this Court, charging the prisoner with 1 count of rape and 1 count of indecent assault. A further count of indecent assault was charged as an alternative to the rape charge. On 7 June, counsel for the prosecution informed the Court that she would not be proceeding on count 1 (including the alternative). Counsel for the prisoner advised that his client would be pleading guilty to the remaining charge.

- [5] The prisoner is now 32 years of age; he would have been 27 at the time of the offence. He has 2 young children, aged 1 and 4, who live on Maiana with their mother (from whom he is separated). He does not work. He has had a mental illness since he was 23, which, from the description of the symptoms (auditory hallucinations and persistent insomnia), is probably schizophrenia. The prisoner has been admitted to Te Meeria mental health ward on at least 4 occasions. He is required to take 3 different kinds of medication. He frequently self-medicates with alcohol. He was intoxicated at the time of the commission of the offence. He admits that he did not know the complainant and had not been an attendee at the *maneaba* gathering. The prisoner has previous convictions for minor offences from 2004 and 2005 (when he would have been 17 or 18), with no convictions for any sexual offences.
- [6] The offence of indecent assault carries a maximum penalty of 5 years' imprisonment,² and will ordinarily attract a custodial sentence. Counsel for the prosecution asks that the prisoner be given a sentence of imprisonment. However the prisoner's actions place his conduct at the lower end of the spectrum for offending of this kind. Furthermore, his mental health issues warrant special consideration. His previous convictions are of little significance. I am willing to treat his plea as having been made at the earliest possible opportunity.
- [7] It has taken more than 4½ years to conclude the prosecution of this case. None of that delay is the fault of the prisoner. For the reasons discussed by the Court of Appeal in *Li Jian Pei*, the prisoner is entitled to a modest reduction in his sentence to compensate him for the breach of his constitutional right to be afforded a fair hearing within a reasonable time.³
- [8] The prisoner has spent 24 days in pre-sentence custody. On a short sentence, taking into account the remission ordinarily allowed under section 56(1) of the *Prisons Ordinance* for "industry and good conduct", that is the equivalent of a 5-week sentence.

² Parliament recently increased the maximum penalty for indecent assault to imprisonment for 7 years, so an offence committed on or after 23 February 2018 should attract a higher sentence.

³ *Attorney-General v Li Jian Pei & Taaiteiti Areke* [2015] KICA 5.

